

REMARKS

Reconsideration of the present application is respectfully requested.

After further digging into the archives relating to the claimed invention, the inventors have discovered additional evidence demonstrating conception of the invention earlier than the critical date of the cited Gisby reference. In particular, the attached Declaration includes much of the same subject matter submitted earlier, with an added document that clearly shows conception of the invention (Exhibit A), and another document illustrating the architecture of the claimed system (Exhibit B). The efforts related to the claimed invention started with conception and followed quickly thereafter with an effort to find a corporate partner that could assist in the effort to reduce the invention to practice. This aspect of the invention is important since the context of the invention cannot, realistically be faked. In other words, the invention occurs in the context of an actual customer calling an actual team call center to obtain a genuine service, such as directory assistance, from one of a plurality of live agents via a telecommunications server. Would Applicants have been better off if they had assembled a group of actors to perform the claimed method, and then asserted that the artificially created context constituted an actual reduction to practice? Instead, Applicants conceived of the invention and then sought a corporate partner in an effort to produce a real reduction to practice with real customers, a real call center having many real agents that are distributing incoming calls through a real telecommunications server. Thus, there should be no dispute that an inventor without access to an actual call center would have extreme difficulty in actually reducing the claimed invention to practice. Thus, the need for a corporate partner with such access, namely Volt Delta Corporation. When efforts to gain a corporate partner that could assist in actually reducing the invention to practice broke down, Applicants diligently moved forward in constructively reducing the invention to practice. In fact, the Patent and Trademark Office has already made a finding of record in the present application that due diligence was shown by the inventors.

With regard to some of the comments contained in the recent Office Action regarding the earlier submitted Declarations, Applicants respectfully point out that many of the comments are not relevant to what is being proven. For instance, the term "CAPS" is an acronym referencing another invention for which Applicant currently has a provisional application pending. With respect to the suggestion that the Declaration shows that ISAM is "an existing system", it is not. For if it were, Applicants would be attempting to prove an actual reduction to practice rather than conception and due diligence. The tense of verbs used in the Declaration documents should not be misinterpreted in such a way. Thus, Applicants respectfully request that the Declaration be examined with regard to proving conception and due diligence, rather than focusing on some other matter.

Claims 1-15 stand rejected under 35 USC §102(e) over Gisby. Applicants respectfully assert that the Gisby reference is clearly overcome by the attached Declaration. In other words, Gisby is not prior art with regard to the claimed invention. Therefore, Applicants respectfully request that the outstanding §102(e) rejections based upon Gisby be withdrawn.

Claims 16-19, 22-26, 29-31 and 34-37 stand rejected under 35 USC §102(e) over Shaffer et al. Applicants respectfully assert that Shaffer et al. is also not prior art against the claimed invention, since the attached Declaration demonstrates conception and due diligence before any critical date associated with Shaffer et al. Therefore, Applicants respectfully request that the outstanding §102(e) rejections based upon Shaffer et al. be withdrawn.

Even if Shaffer et al. could be considered prior art, it fails to anticipate Applicants' claimed invention. The file history in the present application appears to suggest that the Patent and Trademark Office once agreed with this assertion, but apparently changed its mind by later asserting that Shaffer et al. anticipated even more than what was asserted in the original office action. Applicants cancelled the original claims 26 and 37, and incorporated their respective subject matters into independent claims 16 and 29, respectively, following the first Office Action. Claims 26 and 37 were not rejected under §102(e) in the first office action. Thus, even if the attached Declaration is found wanting in demonstrating that Shaffer et al. is not prior art against Applicants' claimed invention, Applicants invite the Examiner to show more consistency in the examination of Applicants' claimed subject matter by again acknowledging that the subject matter of original claims 26 and 37 was and is not shown in the Shaffer et al. reference. Therefore, Applicants respectfully request that the outstanding §102(e) rejection be withdrawn because the Patent and Trademark Office has earlier acknowledged that the claimed subject matter was not disclosed in Shaffer et al., and even if it were, the attached Declaration demonstrates that Shaffer et al. is not prior art against the claimed invention.

Although acknowledging in an earlier Office Action that the subject matter of original claims 26 and 37 were not disclosed in Shaffer et al., the current Office Action now asserts that that subject matter was inherently disclosed. Applicants respectfully disagree. Applicants respectfully assert that this arbitrary finding is not well made. In other words, this change in an official finding by the Patent and Trademark Office should be supported by something more than a mere arbitrary conclusory statement. There ought to at least be an explanation for why the finding was changed, and where and what Shaffer teaches to render the claimed aspect of Applicants' invention inherent. Instead, no explanation was given for this change in findings regarding a particular aspect of the claimed invention, and nothing in the Shaffer et al. reference is identified which could support any conclusion that the claimed subject matter was inherent. Although Shaffer et al. contains absolutely no utterance suggesting that it contemplates seeking customer feedback, the Office Action asserts that a supervisor would inherently seek feedback if the supervisor exercises their option to transfer

a call from an agent to the supervisor. However, Shaffer et al. makes it explicitly clear that customer feedback is not an aspect of the Shaffer et al. system. At column 8, lines 5-7, Shaffer et al. makes it clear that "[N]either the written messages nor the verbal comments are transmitted to the customer in the call between the agent and the customer". It is unfair for the Office Action to assert that Shaffer et al. inherently teaches what it explicitly teaches away from. In other words, Shaffer et al. is interested in detecting a potential communication problem without asking the customer if they perceived a problem. Thus, what Shaffer et al. inherently teaches if a supervisor intervenes in a call is that the supervisor will provide the requested service to the customer in a manner that avoids interruptions and the other phenomena identified in Shaffer et al. Applicants must again respectfully insist that the Patent and Trademark Office make consistent findings with regard to Applicants' claimed invention, or in the very least provide arguments and explanations that are even capable of being addressed and refuted by Applicants. Therefore, Applicants again respectfully request that all of the outstanding §102(e) rejections based upon Shaffer et al. be withdrawn.

Claims 1 and 8 stand rejected under 35 USC §103(a) over Miller et al. in view of Strickland. Applicants respectfully disagree since Applicants' claims require a key feature not addressed in the Office Action and not shown or suggested by either Miller et al. and/or Strickland. In particular, Applicants claimed invention requires that the feedback data be associated with telecommunication server data that includes an identity of the live agent. Miller et al., on the other hand, clearly discloses that any archived information regarding the agent's identity is entered by the agents themselves. Applicants' claimed invention automates this features and provides an improvement over Miller in view of Strickland by avoiding agent abuse. In other words, neither Miller et al. nor Strickland recognize that agents have a motivation to record inaccurate information, especially with regard to negative feedback associated with that particular operator. Management utilizing the Miller et al. in view of Strickland system could expect agents to corrupt useful data by misidentifying the agent identification whenever customer feedback is negative. It is precisely Applicants ability to obtain useful and accurate data that renders Applicants' claimed invention a subtle but important improvement over the art of record. While there is no dispute that Miller et al. shares many features in common with Applicants' claimed invention, it flatly fails to disclose the claimed invention, and it fails to show or suggest a key aspect of Applicants' claimed invention that is not addressed in the Office Action. Therefore, Applicants respectfully request that the outstanding rejections of claims 1 and 8 under 35 USC §103(a) based upon Miller in view of Strickland be withdrawn.

Claims 16 and 29 stand rejected under 35 USC §103(a) over Dezonno in view of Fedorov et al. Applicants again respectfully disagree since the attached Declaration demonstrates that Fedorov is not prior art against Applicants' claimed invention. Therefore, Applicants respectfully request that these outstanding rejections be withdrawn.

Even if Fedorov could be considered prior art against Applicants' claimed invention, the combination of Dezonno with the Fedorov et al. fails to teach Applicants' claimed invention, when the references are considered as a whole, as they must be. Applicants and the Patent and Trademark Office agree that Dezonno fails to teach Applicants' claimed customer feedback aspect. In addition, the Office Action fails to acknowledge that the phenomenon detected by Dezonno, namely conversational interruptions, are not among the phenomena required in the claim. Thus, not only does Dezonno fail to teach Applicants' claimed customer feedback aspect, but it also fails to disclose the triggering actions required by claims 16 and 29. In addition, the Office Action fails to address that when Dezonno is viewed as a whole, as it must be, it is implicit that Dezonno is not interested in querying the customer to confirm that they felt that the agent had interrupted them during the agent/customer conversation. Thus, Dezonno is clearly not interested in acknowledging a possible problem to the calling customer. They are merely concerned with silently alerting both the agent and the supervisor that simultaneous speaking by the agent and calling customer indicates a supposed interruption. No where does Dezonno show or suggest that there might be a need to request customer feedback as to whether they felt that the agent had interrupted them. Therefore, Applicants respectfully assert that Dezonno does not teach what the Office Action asserts, and Fedorov fails to remedy these defects.

In addition, Applicants respectfully assert that Fedorov does not teach what the Office Action asserts. In particular, the Office Action asserts that Fedorov teaches requesting feedback from the caller regarding the service at column 2, lines 65-67 to column 3, lines 1-2. Instead, what Fedorov teaches at the cited passages can only be correctly interpreted when Fedorov is viewed as a whole. Fedorov is about providing a means by which a supervisor can intervene in a customer/agent call and arrive at that intervention with some knowledge of what has already occurred between the agent and calling customer. In other words, it is utterly clear that the service to the calling customer has not been completely rendered if and when the supervisor intervenes. Therefore, the cited passages of Fedorov merely indicate that the supervisor picks up where the agent left off in delivering the requested service to the calling customer, which is not an aspect of Applicants' claimed invention. If one with ordinary skill in the art were to view the teachings of Dezonno combined with Fedorov, they would arrive at something other than Applicants' claimed invention. A fair combination of these references would be that if and when a supervisor intervened in a Dezonno call because the system detected an interruption, the supervisor would have information relating to what has already occurred between the agent and customer available so that the supervisor can assist in providing the service without interruption and without starting the process with the calling customer all over again from scratch. For instance, the supervisor might be provided with information relating to a requested catalog item before intervening in the agent/customer call. But again, that is not Applicants' claimed invention. Therefore, Applicants

again respectfully request that the outstanding rejections based upon Dezonno in view of Fedorov be withdrawn.

Claims 20, 21, 32 and 33 stand rejected under 35 USC §103(a) over Shaffer et al. in view of Campbell et al. Applicants respectfully disagree, but request that these rejections be withdrawn as the attached declaration demonstrates that neither Shaffer et al. nor Campbell et al. are prior art against Applicants' claimed invention.

Even if Campbell et al. could be considered prior art against the cited claims, this rejection is not well made since Shaffer et al. implicitly teaches away from Applicants' claimed invention. In particular, there should be no dispute that Shaffer et al. is directed to detecting agent performance problems of a type detectable without requesting any information from the calling customer. In fact Shaffer et al. makes it explicitly clear at column 8, lines 5-7 that Shaffer et al. teaches away from even acknowledging to the calling customer that there is a problem, let alone obtaining customer feedback regarding the same. Shaffer et al. specifically teaches a triggering action that is detected and dealt with without any request for anything from the customer. Thus, Shaffer et al. teaches away from seeking customer perceptions as a way of accessing agent performance, and instead is directed to automatically detecting and dealing with supposed problems without acknowledging a problem to the customer and without input from the customer. Thus, Shaffer et al. can only be fairly interpreted as a teaching away from Applicants' claimed invention.

Claim 20 requires the triggering action to include utterance of a predetermined word. Shaffer et al., on the other hand is triggered by how the agent and customer are communicating (e.g. at the same time, long silence, etc.) rather than what is being communicated, as in Applicants' claimed invention. Claim 21 is similar in that the triggering action includes a predetermined word uttered by one of the customer and agent. Applicants do not dispute that Shaffer et al. shares many features in common with the claimed invention. However, when Shaffer et al. is viewed as a whole, there should be no dispute that Campbell adds little to nothing to support a rejection against any of Applicants' claims. Not only is Campbell et al. directed to something completely different than Applicants' claimed invention, but the identified passages do not motivate one skilled in the art to obtain customer feedback before the communication link is terminated. Instead, Campbell et al. states that its IVR services can be used for "caller surveys". There should be no dispute that merely because Campbell suggests surveying customers, that it necessarily means surveying customers for feedback regarding a provided service before a communication link is terminated. In other words, no one with ordinary skill in the art would interpret the phrase "caller surveys" as suggesting the gathering of feedback data regarding a service during a call, as required by Applicants' claimed invention. There should be no dispute that a survey could include questions entirely unrelated to anything that could be properly characterized as feedback. Therefore, when one views Shaffer et al. and Campbell as a whole, as they must be, there should be no dispute that Campbell adds little to

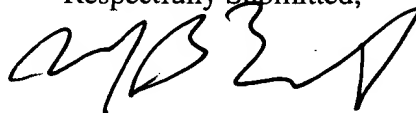
the rejection and the rejection essentially stands on what one with ordinary skill in the art would be motivated to do in view of a fair assessment of the Shaffer et al. teachings. Therefore, Applicants again respectfully request that the outstanding §103(a) based upon Shaffer in view of Campbell be withdrawn.

Claims 27, 28, 38, and 39 stand rejected under 35 USC §103(a) over Shaffer et al. in view of Mahoney et al. Again, Applicants respectfully assert that even if Shaffer et al. and Mahoney et al. disclosed what the Office Action asserts, such a combination still comes up short in arriving at Applicants' claimed invention. As stated earlier, Shaffer et al. can only be fairly interpreted as not teaching the gathering of feedback data from customers since it expressly teaches that customers are not informed that a problem even exists. Mahoney et al. fails to remedy this defect. Therefore, Applicants respectfully request that the outstanding §103(a) rejections based upon Shaffer et al. in view of Mahoney et al. be withdrawn. In addition, because Shaffer et al. is not prior art against Applicants claimed invention, the outstanding rejections based upon Shaffer et al. in view of Mahoney should be withdrawn.

New claims 40 and 41 have been added, and are believed allowable over the art of record. No additional fee is believed required; however, the Director is authorized to charge any underpayment or credit any overpayment to deposit account number 500226.

This application is now believed to be in condition for allowance of claims 1-25, 27-36 and 38-41. However, if the Examiner believes that some minor additional clarification would put this application in even better condition for allowance, the Examiner is invited to contact the undersigned attorney at (812) 333-5355 in order hasten the prosecution of this application.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'MBM', is written over the typed name.

Michael B. McNeil

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